IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 313 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SUJAUDDIN @ SAJJU INMUDDIN KADRI

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 313 of 2002

MR EE SAIYED for Petitioner No. 1

MR AY KOGJE Ld. APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 03/07/2002

ORAL JUDGEMENT

Heard learned counsel appearing for the petitioner and Ld. APP Mr. Kogje for the respondent-state. Today, in compliance of the earlier order dated 26.6.2002 the original papers of the

proceedings drawn by the Deputy Commissioner of Police (North Zone) Surat City have been brought before this Court for perusal.

In reference of affidavit-in-reply filed by Mr AK Pande, Deputy Commissioner of Police, (North Zone) Surat City, the court has carefully perused the relevant papers of the proceedings brought today and the proceedings drawn by the concerned clerk. There are some apparent irregularity noticed by this Court in maintenance of proceedings, however, they are being not very serious are ignored.

Learned counsel Mr. EE Saiyed for the petitioner has mainly assailed the order of externment under challenge on the ground that the authority has passed the order at a very belated stage and delay in passing the order of externment against the petitioner has seriously prejudiced the rights and interests of the petitioner and it is contrary to the intention of the legislature. According to Mr EE Saiyed, the authority on the contrary could have terminated the proceedings in view of the fact that in a span of two years, there was no apparent wrong was brought to the notice to the authority. The further grievance of Mr. Saiyed is that the appeal provided under sec. 60 of the Bombay Police Act, 1951 preferred to the Government has also been dismissed without proper application of mind. The delay part has not been considered by the appellate authority at all. The order of externment is dated 11.1.2002. The notice to show-cause is dated 1.6.1999 and was served to the externee on 13.6.1999. The petitioner had immediately responded to the notice and had filed written reply on 16.8.1999. In the year 1999-2000 some witnesses were examined by the petitioner in support of his contention raised in the written reply and all these witnesses were cross-examined by the responsible officer presenting the case before the authority. The petitioner has also produced a certificate given by him in the year 1997 to show that he is a Commission Agent and doing the business of Tours & Travels in the name and style of A to Z Tours & Travels at particular show in Manohar Complex, Saiyedpura, Surat. In the month of February, 2000 i.e. on 15.2.2000 written arguments were submitted and after several months as the petitioner was not informed about the out come of the proceedings, he had prayed for the result of the proceedings. A written application submitted on 10.8.2001 to the authority is also in the proceeding though the proceedings drawn is totally silent about this document wherein it is specifically contended that as the proceedings have not concluded within six

months from the date of the initiation than in view of the settled legal proposition and the decision of the High Court of Gujarat (Coram: N.N. Mathur, J.) the proceedings should be terminated. Of course, the application does not refer the number of the petition but it seems that the copy of the order of the High Court must have been shown to the authority because the application reveals this aspect.

In reply affidavit filed by the Deputy Commissioner of Police has stated that proceedings were adjourned due to absence of the petitioner as well as his lawyer for more than 64 times. On one or other reason, time taken by the petitioner as well as his lawyer, the delay has occurred. This is contrary to the proceedings produced before this Court today. Even for the sake of argument it is accepted that for passing appropriate orders, the presence of the petitioner was required and he was seeking time, than it was open for the Presiding Officer to reject the request for adjournment and appropriate orders could have been passed. The Court is not satisfied at with the illogical and face-saving explanation. The delay caused in passing the externment order goes to the root of the merits of the order and it vitiates the order and such order cannot sustain. Normally, as provided by the Statute even if a person is to be externed he can be so externed for the maximum period of two years and in the present case the order of externment has been passed after a lapse of more than two years period from the date of the service of the show-cause notice. How can it be concluded that the cause to extern the petitioner was at all surviving on the day on which the externment order was passed.

All these above discussed aspects could have been noticed by the appellate authority while dealing with the appeal preferred by the petitioner. Plain reading of the order passed by the appellate authority gives impression that none of the papers of the proceedings were perused by the appellate authority and the Deputy Secretary (Home) has dismissed the appeal considering the allegations found in the notice to show cause. Such order also cannot sustain.

In the result, this petition is allowed. Both the orders under challenge namely order dated 11.1.2002 passed by the Deputy Police Commissioner (North Zone) Surat City and confirmed by the Deputy Secretary (Home) dated 12.4.2002 are hereby quashed and set aside. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)

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